

the Patent Office. According to the MPEP, where claims can be examined together without undue burden, the Examiner must examine the claims on the merits even though they are directed to independent and distinct inventions. *See*, MPEP § 803. In establishing that an "undue burden" would exist for co-examination of claims, the Examiner must show that examination of the claims would involve substantially different prior art searches, making the co-examination burdensome. Applicants respectfully submit that examination of the claims in Groups I-II in the present application would not create an undue burden.

In the present case, the restriction groups identified by the Examiner should not require different searches. While the nomenclature is different between Groups I and II (claims 78-79 use the $R_1R_2R_3R_4R_5$ format and claims 80-93 use the $X_1X_2X_3X_4X_5X_6X_7X_8X_9X_{10}X_{11}X_{12}X_{13}$ format), both nomenclatures are used to describe overlapping sets of pan-DR binding peptides. Indeed, the claims of Group II are entirely encompassed by the scope of claims of Group I. The claim scope is described in the Preliminary Amendment filed with the application on November 6, 2002. For example, the table on page 5 of the Preliminary Amendment illustrates the relation of claims 78 and 80 (the independent claims of Groups I and II, respectively). Since a search of the subject matter of Group I necessarily requires a search of the subject matter of Group II, Applicants respectfully request reconsideration of the restriction.

II. Species Election

Applicants also elect the species KXVAAWTLKAA. Claim 78 reads on this species. The election is made with the understanding that upon the determination that the elected species is free of the prior art, additional species will be examined in accordance with MPEP § 803.02, which states that "should no prior art be found that anticipates or renders obvious the elected species, the search of the Markush-type claim will be extended." and that "[t]he prior art search will be extended to the extent necessary to determine the patentability of the Markush-type claim."

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If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



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